

REMARKS

The office action issued by the Examiner and the citations referred to in the office action have been carefully considered. Claims 1, 3-4, 6-10, and 13 are pending. Claims 1 and 13 have been amended to correct the dependency.

Claim Rejections - 35 U.S.C. § 103

The Examiner has rejected Claims 1, 3-4, 6-10 , and 13 under 35 U.S.C. § 112 as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 13 have been amended to correct the antecedent basis in the claims.

Claim Rejections - 35 U.S.C. § 103

The Examiner has rejected Claims 1, 3-10, and 13 under 35 U.S.C. § 103(a) as being unpatentable over Runge (U.S. Patent No. 5,247,781) in view of Grevich et al (U.S. Patent No. 4,305,240) and further in view of Ausnit (U.S. Patent No. 4,876,842).

The Examiner has stated that Grevich discloses a package forming and sealing machine receiving articles confined within a conveyed tubular wrapper of sheet material, having a, rotor (17) having sealing and cutting heads (18) continuously driven by a motor (23) and chains (22.2,23-1), which keeps the film (12) under tension. The power-driven rotor has a series of jaws for transversely sealing and separating the packages, and downstream of the rotor is a belt (19) for collecting and feeding out the packages.

Further, the Examiner has stated that the rotor applies a uniform pulling force on the tubular wrapper filled with articles. The skilled person would recognize that applying tension to the outgoing film would reduce the crumpling of tapes such that it would be obvious to apply this feature to the machine described by Runge in order to solve the problem posed and so arrive at the subject-matter of claim 1 without the use of an inventive step.

However, Grevich does not have any positive teaching, suggestion, or motivation that the rotor applies a uniform pulling force on the tubular wrapper filled with articles. On the contrary, at column 5, lines 20 to 29 Grevich states that *the main shaft 17 receives rotary motion from the wrapper 11 so as to coordinate the rotational speed of the rotor with the rate of travel of the article-containing sheet material wrapper 14 being received by the rotor. More specifically, a source of rotary motion or motor 22 is connected with a variable speed drive 22.1 by a chain 22.2, and the variable speed drive 22.1 is connected to a sprocket 23 affixed on the main rotor shaft 17.1 by a chain 23.1.* Thus it appears that it is the wrapper (17) that drives the foil (12); the rotational speed of the shaft (17) is **coordinated** to the speed of travel of the articles in the wrapper, in other words the rotational speed of the shaft (17) is such that the peripheral speed of the external surface of the shaft (17) is equal to the speed of travel of the articles in the wrapper and thus the shaft is not able to apply any pulling force to the film (12), contrary to the solution of the present invention. Under these circumstances the objective teaching of Grevich leads to a completely different solution and would not and also could not be taken by the skilled person for arriving at the solution of the present invention.

Moreover, Grevich describes a package forming and sealing apparatus which is completely different from the new technology which is object of the present invention: there are technical differences which would prevent the skilled person from considering to utilize the technical knowledge of Grevich.

Grevich does not foresee in the sealing apparatus any zip closure. There is no indication in Grevich that a zip closure is introduced in the package as in the present claims. Grevich only provides for a package for an article and does not offer any possibility for opening the package with a zip closure. For opening the package of Grevich, the user is obliged to use a certain force on the package itself or to have at his or her disposal a sharp tool like a knife or a pair of scissors, which renders the opening of the package uncomfortable.

It would therefore have been impossible for the skilled person who wishes to solve the above technical problem even to consider the disclosure of Grevich because this document

describes a completely different article package without the possibility of the zip closure which is, on the contrary, required in the present invention, as stated in the claims.

Moreover, Grevich describes an old device whereby the joint of the two halves of the film is made longitudinally in the middle of the article and not laterally of it.

Articles of this type are generally known in the field of, for instance, frozen food. No zip closure is present and to open the package a knife or scissor are required.

The fact that the joint is made in the middle of the article and not laterally renders technically impossible to think to introduce a zip closure. Therefore the known technical solution of Grevich makes the introduction of a zip closure impossible: even if one would think of inserting a zip closure, there would be no possibility to introduce the zip closure, due to the position of the joint of the two halves of the film (longitudinally in the middle and not laterally of the article), which does not give any room for a zip closure.

Therefore no person skilled in the art would arrive even at the mere idea of using the teaching of Grevich (no zip closure, old design) for solving the problem of the pending claims.

Under these circumstances and taken account of the above considerations, the use of the teaching of Grevich for solving the problem of the present invention represents an *ex-post-facto* or *hindsight analysis*, because only after knowing the solution of the present invention, the teaching of Grevich is considered, but, as seen above, the person skilled in the art at the time of the invention would not have considered Grevich, because it would have necessarily led him or her to a solution different from the one of the present invention.

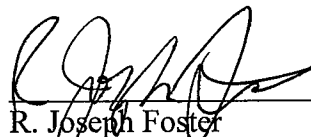
In other word, at the time of the invention the skilled person, even if *could* have taken Grevich into consideration, *would not* have considered it. Impermissible hindsight should be avoided and the legal conclusion must be reached on the basis of the facts gleaned only from the prior art. As a consequence it is submitted that the present application describes an inventive packaging machine equipped wit a zip closure.

Applicants have complied with all requirements made in the above-referenced communication. Applicants submit that the present application is in condition for allowance, and therefore, respectfully request that a timely Notice of Allowance be issued in this case. Should matters remain, which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicants' undersigned agent.

The Director is authorized to charge any additional fee(s) or any underpayment of fee(s), or to credit any overpayments to Deposit Account Number **50-2638**. Please ensure that Attorney Docket Number 58009-017200 is referred to when charging any payments or credits for this case.

Respectfully submitted,

Date: January 4, 2007



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